IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2380 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ.INDUSTRIAL CO.BANK LTD - Petitioner(s)
Versus
MACCA'S GENERAL FOODS PVT LTD & 6 - Respondent(s)

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Appearance :

MR ARUN H MEHTA for Petitioner(s) : 1,
None for Respondent(s) : 1,4 - 5, 7,
MR GT DAYANI with MR SL VAISHYA for Respondent(s) : 2 - 3.
DELETED for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/05/2007

ORAL JUDGMENT

1. Shri A.H. Mehta, learned counsel for the petitioner; none for the respondent no.1; Shri

G.T. Dayani, learned counsel with Shri S.L. Vaishya, for the respondents no.2 and 3; none for others.

2. By this writ application, the petitioner-Bank seeks to challenge the order dated 15.2.93 passed in Appeal Case No. 93/92 by the Gujarat State Cooperative Tribunal, Ahmedabad, whereunder, the Tribunal, set aside the judgment dated 31.1.92 passed by the Board of Nominees in Lavad Case No. 2966 of 1983 whereunder the Lavad Suit filed by the petitioner was allowed.

3. Shri A.H. Mehta, learned counsel for the petitioner submits that from the facts, it would clearly appear that the respondents' application for becoming member of the Cooperative Society was earlier not accepted, but on a second thought, it was accepted in the year 1984 and an amount of Rs.51/- was deposited from the accounts of the respondents and thereafter, share certificate was issued in favour of the respondents and it would clearly appear that the respondents-sureties, in fact, became debtors. He also submits that Division

Bench judgment of this Court in the case of Rasiklal Patel & Ors. v. Kailasgauri Ramanlal Mehta & Ors., reported in 12 GLR 355, deserves reconsideration in view of the judgment of the Bombay High Court in the case of C.P. Khanna v. V.K. Kalghatgi and others, reported in AIR 1970 Bombay 201. He submits that the reasonings given in the Bombay High Court judgment are based upon the judgment of the Supreme Court in the matter of Munnalal Jain v. State of Assam, reported in AIR 1962 Supreme Court 386, therefore, the matter be referred to the Larger Bench.

4. Learned counsel for the respondents no. 2 and 3 submits that once the respondents' application seeking membership in their favour was rejected by the Board of the Bank, then, the said application would not survive and in absence of an application by the original debtors, they could not be taken to be the members. It is also submitted that a suit against the sureties, in view of the Division Bench judgment of this Court in the matter of Rasiklal Patel [supra] was not maintainable before the Board of

Nominees. He further submits that the judgment in the matter of C.P. Khanna [supra] would not get any precedence over the Division Bench judgment of this Court.

5. So far as the question of membership is concerned, it is to be seen that the principal debtors applied for membership on 9.6.81. On 4.8.81, the head office of the Bank directed the Branch to separate applications. The principal debtors' applications at sr. nos. 100 and 101 were not accepted by the Board and as such, they stood rejected. Treating the non-acceptance of the application to be a rejection, the Branch Manager refunded the sum of Rs. 51/-. However, the applications continued to remain in the file as part of the records. It appears that Lavad Suit No. 2966 of 1983 was filed in the court of learned Registrar's Nominee on 9.12.83. Subsequent to filing of the Lavad Suit, the Bank, for the reasons best known to it allowed some mysterious application [In fact, there was no application for consideration] on 20.10.84 and enrolled the principal debtors as

members of the Cooperative Bank. A share certificate was sent to them and sum of Rs. 51/- was debited from the account of the principal debtors. Placing reliance upon these facts, Shri Mehta submits that if the respondents did not refuse the share certificate nor condemned the action of the Cooperative Bank, then, they are estopped by their conduct in challenging the action of the Bank and cannot now say that they did not become members.

6. In a case where a person makes an offer to the Bank that he be granted membership, then, the Bank in its discretion can grant or reject the application, but such grant or rejection of the application would be final. In case of rejection of the application or non-acceptance of the application, the application would stand rejected for all practical purposes. However, it may be kept in the records to make the records complete. Once such application is rejected, then, the Bank would have no authority to take up the application afresh and start considering the application without any information from

the principal debtor or to the principal debtors and could not grant them membership. If in the year 1981, after rejection of the membership application, everybody was happy and content and the principal debtors did not apply afresh for grant of the membership, then, membership could not be thrusted upon them and that too, after institution of the Lavad Suit. Action of the Bank in granting membership on 20.10.84, in fact, was actuated by a motive to defeat the rights of the principal debtors. In absence of grant of membership a Lavad Suit would not have been maintainable. It would be clear from the records that to overcome this difficulty the Bank suo motu, without a prayer or request from anybody, thrusted membership upon the respondents; while doing so, the Bank acted in most unfair manner. True it is that the Board of the Bank has right to grant membership with retrospective effect, but not in a manner like this. In absence of an application from the side of the principal debtors, the Board on its own could not thrust membership and bring their

suit within the jurisdiction of the Registrar's Nominee. This action of the Bank was absolutely uunfair and motivated, it cannot be said to be a fair action. Grant of such membership would not make principal debtors members of the petitioner Bank. The learned Tribunal was absolutely justified in rejecting/dismissing the suit against the principal debtors.

7. On an earlier occasion, certain amendments were carried out in Section 96 of the Gujarat Cooperative Societies Act, 1961. The law which was unamended provided that the suit in the Registrar's Nominee Court can be filed against particular persons. The first and foremost requirement was that he must be a member etc. The said amendment made in Section 96 was to authorize inclusion of the sureties/guarantors in a suit to be filed by the Bank/Creditors against the principal debtors, irrespective of the fact that sureties were not members of the Cooperative Society/Bank.

8. Constitutional validity of the said amendment came to be challenged in the matter of Rasiklal

Patel and others [supra]. The Division Bench of this Court in the said judgment held that amendment made in Section 96, in fact, was creating a class within the class and was creating discrimination between different people. The amendment made in the Act was quashed. The said Judgment is holding the field for almost about 36 years.

9. In the matter of C.P. Khanna [supra], the question before the Division Bench of the Bombay High Court was whether inclusion of other cooperative societies or the liquidator appointed under the Act can be subjected to a suit before the Registrar's Nominee. The High Court observed that having regard to the scheme of the Act, their inclusion cannot be objected. The question of validity of provision akin to or pari materia to Section 96[1] was not under consideration before the Bombay High Court. There is reference to the Supreme Court judgment in the matter of Munnalal Jain [supra] observing that Sections 91 to 96 of the Act and the Rules framed thereunder prescribing the

special procedure did not, in any manner, offend Article 14 of the Constitution. Placing reliance upon the above referred observations made by the Bombay High Court and the judgment of the Supreme Court, Shri Mehta submits that the matter be referred to the Larger Bench.

10. In the matter of Rasiklal Patel [supra], the provisions were directly under consideration and the Division Bench has found that the provisions were ultra vires the Constitution or the Scheme of the Act. If that be so, then, simply because some other High Court made certain observations in relation to some other Act, this Court would not be required to refer the matter to the Larger Bench. The submission deserves to and is accordingly rejected.

11. If Section 96 does not permit the Bank to file Lavad Suit against the sureties in the court of the Registrar's Nominee, then, the Cooperative Tribunal was justified in setting aside the decree granted against the sureties/guarantors. It would, however, be worth noting that Shri Mehta submitted that if the different Courts

have jurisdiction against the member and the sureties/guarantors, then, for the same cause of action, the principal creditor would be required to file separate suit, pay double court fees, undergo double expenses and simultaneously possibility of conflicting orders cannot be ruled out. This Court bound by the judgment of this Court in the matter of Rasiklal Patel cannot help them. The petition deserves to and is accordingly dismissed with costs of Rs.5,000/- to be paid by the petitioner Bank to the contesting respondents no.2 and 3. Rule is discharged. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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